

Appl. No.: 09/913,377
Group Art Unit: 1616
Response to Paper No. 9

REMARKS

Claims 9-37 are currently pending in the instant application.

Claims 35-37 have been amended to specify that the products embodied therein contain one or more phytosterols as their major constituent. The amendments to claims 35-37 are supported by the claims as originally filed and in the Examples of the Specification. No new matter has been introduced. The amendments to claims 35-37 make it clear that the compositions embodied therein are different than the residue stream of prior art cited by the Examiner, as explained below in more detail. Accordingly, the amendments are proper after final rejection as they place the application in a condition for allowance. A complete listing of all claims ever presented is included herein in accordance with 37 C.F.R. §1.121(c). Entry of the amendments to claims 35-37 is therefore proper and respectfully requested.

In Paper No. 9, the Examiner reiterates that claims 9-34 are allowed.

Additionally, in Paper No. 9, the Examiner maintains her rejection of claims 35-37 under 35 U.S.C. §102(e), as being anticipated by U.S. Pat. No. 6,107,456 of Huibers, *et al.*, (hereinafter referred to as "Huibers"), and makes the rejection final. Specifically, the Examiner maintains that while the Huibers residue stream is not the main sterol recovery stream, this waste stream disclosed in the reference does contain some minimal amount of sterol, and thus, arguably reads on the claimed invention.

Applicants respectfully traverse the Examiner's rejection, along with the contentions and arguments in support thereof for the following reasons.

Applicants' claimed invention, as amended, is directed to a composition comprising *a major portion* of one or more natural phytosterol compounds, wherein the composition has a citrostadienol content of 0.5% by weight or less. Another embodiment of Applicants' claimed invention, as amended, is directed to a product prepared by the process according to claim 9, wherein a major portion of the product comprises a phytosterol.

The "Residue" of Example 6 in the Huibers reference, as set forth in Table B, is NOT the sterol recovery feed *and does NOT contain any significant amount of phytosterol*, much

Appl. No.: 09/913,377
Group Art Unit: 1616
Response to Paper No. 9

less a major portion. In the row of Table B labeled "Total these three sterols", it is indicated that the "Residue" contains 0.25% by weight sterol.

Accordingly, Applicants submit that the disclosure of Huibers is insufficient to anticipate Applicants' claimed invention, as amended. Reconsideration and withdrawal of the Examiner rejection under 35 U.S.C. §102 is respectfully requested.

In view of the remarks set forth above, Applicants submit that all pending claims patentably distinguish over the prior art of record and known to Applicants, either alone or in combination. Accordingly, reconsideration, withdrawal of the rejection and a Notice of Allowance for all pending claims are respectfully requested.

Respectfully submitted,

JOERG SCHWARZER, *et al.*

March 8, 2004
(Date)

By: 

AARON R. ETTELMAN
Registration No. 42,516
COGNIS CORPORATION
300 Brookside Avenue
Ambler PA 19002
Telephone: (215) 628-1413
Facsimile: (215) 628-1345
E-Mail: AARON.ETTELMAN@COGNIS-US.COM

ARE:are